

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

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UNITED STATES DEPARTMENT OF LABOR,	)	
OFFICE OF FEDERAL CONTRACT COMPLIANCE	)	
PROGRAMS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
PROVIDENT BANCORP., INC.	)	Case No. 94-OFC-13
	)	
Defendant,	)	Judge Jansen

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CONSENT DECREE

Pursuant to 41 CFR 60-30.13, the parties to this action, plaintiff, United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP"), and defendant, Provident Bancorp., Inc., have negotiated and executed this Consent Decree, including all attachments hereto. This Decree constitutes a full and final resolution of this action and all issues arising from the compliance review of the defendant's Cincinnati area offices initiated in September, 1989 by the plaintiff's Columbus, Ohio area office.

Part A. Jurisdiction and Procedural History

1. This forum has jurisdiction in this matter pursuant to Sections 208 and 209 of Executive order 11246 (30 Fed. Reg. 12319), as amended ("the Executive Order"), and the regulations issued thereunder at 41 CFR 60-1.26 and Part 60-30.

2. Plaintiff initiated this enforcement action on May 24, 1994, by filing an Administrative Complaint alleging that the defendant failed to comply with its obligations as a Government contractor under the Executive Order and its implementing

regulations.

3. The issues resolved by this Consent Decree were identified initially in a compliance review of defendant's Cincinnati area offices initiated by plaintiff in 1989.

4. Plaintiff issued a Pre-determination Letter on February 21, 1990, advising the defendant of its findings.

5. When defendant failed to respond to plaintiff's Pre-determination letter, Plaintiff issued a Notice of Violations on March 16, 1990.

6. The parties then entered into conciliation but failed to resolve the alleged violations including the issue of back pay due to the affected class.

7. On December 20, 1990, plaintiff issued a Show Cause Notice to the defendant. Subsequent efforts to resolve the matter through conciliation failed.

8. Plaintiff filed an Administrative Complaint against defendant on May 24, 1994 and a hearing on the merits was scheduled for September 9, 1996.

9. On August 15, 1996, on joint motion by the parties, the Administrative Law Judge granted a stay of the hearing date for the purpose of submitting a formal settlement agreement. The instant agreement is submitted for that purpose.

#### PART B. GENERAL PROVISIONS

10. This Consent Decree shall constitute the final Administrative Order in this case, and shall have the same force and effect as an order made after a full hearing and final review by the Secretary of Labor.

11. This Consent Decree constitutes full and final settlement

and resolution of all issues and claims arising out of the Administrative Complaint in OFCCP v. Provident Bancorp., Inc., 94-OFC-13.

12. The record forming the basis on which this Consent Decree is entered shall consist of the Administrative Complaint, this Consent Decree and the attachments hereto.

13. This Consent Decree shall not become final until it has been signed by the Administrative Law Judge. The effective date of the Decree shall be deemed to be three (3) days after it becomes final.

14. The term of this Decree shall be for five (5) years.

15. All further procedural steps to contest the binding effect of this Decree are hereby waived by the parties.

16. Any right to challenge or contest the validity of the findings and Order entered into in accordance with the agreements contained in this Consent Decree is waived by the parties.

17. This Decree shall be binding on the defendant, its successors, assigns, divisions and subsidiaries, and plaintiff and its agents, officers and employees.

18. Nothing herein is intended to relieve the defendant from compliance with the requirements of the Executive order, its implementing regulations or any other statute enforced by plaintiff, or to limit plaintiff's right under applicable regulations to review defendant's compliance with such requirements. Compliance with this Decree shall constitute compliance with the Executive order only with respect to those issues which are within the scope of this Decree. However, the provisions of this order will be deemed to be part of defendant's

AAP. Subject to performance by defendant of all promises and representations contained herein, issues with respect to the above-captioned matter between plaintiff and defendant will be deemed resolved:

19. Plaintiff may request documentation or otherwise review compliance with this Decree on a semi-annual basis or at any time where good cause is presented during its effective date. During such review, Defendant agrees to provide plaintiff with any information as is reasonable and is requested by plaintiff for the purpose of enforcing the provisions of this decree.

20. Defendant agrees that there will be no retaliation of any kind against any beneficiary of this Decree, or against any person who has provided information or assistance, or who files a complaint, or who participates in any manner in any proceeding under the Executive Order.

21. The parties agree that the assigned administrative law judge shall retain continuing jurisdiction over this matter until all provisions contained therein are enacted.

#### PART C. SPECIFIC PROVISIONS

22. The parties desire to enter into a just and reasonable resolution of this matter without further proceedings. The terms of this Agreement are the product of negotiation. Concepts reflected in this Agreement are not intended to be adopted for any purpose other than the Agreement. To that end, they have negotiated in good faith and have executed this Consent Decree with the following specific provisions:

1. Violation: 41 C.F.R. 60-1.4(a)  
Notice of Vender Obligation

Defendant had not notified Vendors and Contractors of their obligations to develop an AAP if they meet coverage thresholds.

Corrective Action:

Defendant agrees to develop a method to notify Vendors and Contractors of their obligations under 41 C.F.R. 60-1.40

2. Violation: 41 C.F.R. 60-1.4(a)(1)  
Disparate Impact/Disparate Treatment  
(Affected Class/Minority Applicants)

Desk audit results and the on-site review revealed that Provident Bank's hiring process and practices have resulted in disparate impact for minorities in 1988 and 1989 in the following job groups: Teller and General Clerical. Sampling of applications on-site revealed that some more qualified minorities had not been contacted for interviews. In addition qualified minorities who were interviewed had been selected for hire at a disproportionately lower rate than non-minorities.

This constitutes discriminatory selection practices and establishes an affected class of minority applicants.

Corrective Action:

BACK PAY, JOBS AND APPLICANT RETENTION

a. Defendant will provide back pay in a total amount of Four Hundred Forty-Three Thousand Eight Hundred Twelve Dollars and Fifty Cents (\$443,812.50) to the affected class members. Members of the affected class shall consist of those individuals listed in Attachment A.

b. Defendant will offer jobs to at least 20% of the class members listed in Attachment A who qualify for interviews. These jobs shall consist of the positions of branch teller and general clerical positions. The order in which the offers are made shall be established by the plaintiff. Any individual who receives an offer of employment must accept such offer within ten (10) days, and must report to work within twenty (20) days of the offer or forfeit such offer.

c. Defendant's obligation to employ class members shall be limited to (a) the exhaustion of Attachment A, (b) when 200 class members are employed or (c) when funds need to be reserved for the following described payments, whichever comes first. Should additional funds be required to fulfill this obligation, said funds shall be drawn from amounts earmarked for the establishment of the education and scholarship fund, as further provided for in this agreement.

d. All class members who are offered jobs are to receive \$1,000.00 in back pay.

e. Within ten (10) calendar days after the effective date of the Consent Decree, defendant will place Two Hundred Twenty-One

Thousand Nine Hundred Six Dollars and Twenty-Five Cents (\$221,906.25) in an account established for the above purpose. An additional amount shall be placed in the same account within one year of the inception of the account. Any interest earned by this account shall inure to the benefit of the plaintiff.

f. Within ten (10) days after the establishment of the account referred to in Paragraph 22.2.e, above, defendant shall furnish to plaintiff a report setting forth:

- (i) the date on which the account was established:
- (ii) the amount of the deposit into account:
- (iii) the identity of the institution where the account is established: and
- (iv) the interest rate at which the fund is invested.

g. Within ninety (90) days after the establishment of the account, and every ninety (90) days thereafter until the account is closed, defendant shall furnish to plaintiff a report setting forth the amount of each deduction from the account and the amount of interest earned by the account in the preceding quarter.

h. Within thirty (30) calendar days after the effective date of the Consent Decree, the defendant will send to each class member the Notice attached as Attachment B, hereto, and the Class Member Information Form attached as Attachment C, hereto. Within five (5) business days after the date on which it mails the first round of Notices and Class Member Information Forms to the class members, defendant shall advise plaintiff in writing of the date of that mailing. Defendant will use other sources as necessary and reasonable, such as telephone and city directories and contacts with any friends or relatives listed on an application, to locate those class members who are not reached in the first mailing. If after three (3) months defendant is unable to locate any individual listed in Attachment A, said name will be forwarded to plaintiff who will attempt to locate said individual. If after three (3) months plaintiff is unable to locate said individual, they will be eliminated from further consideration.

i. Within six (6) months after the effective date of the Decree, the parties will meet either in person or by telephone to discuss the progress of the defendant's efforts to locate the class members.

j. The parties may modify any time frame set forth in this Decree by mutual agreement. In addition, the parties may petition the Administrative Law Judge to extend any of the above time periods for no more than thirty (30) days.

k. For purposes of retention of applicants hired for the positions herein stated, class members who are hired will receive an additional payment of \$1,250.00 (if full-time) or \$625.00 (if part-time). Further each class member shall receive \$2,500.00 (if full-time) or \$1,250.00 (if part-time) upon completion of their first year of employment and payments of the same amount upon completion of their second year of employment.

## FUNDED PROGRAMS

l. Within ten (10) calendar days after the effective date of the Consent Decree, defendant will place the first of five annual installments totaling Four Hundred Forty-Three Thousand Eight Hundred Twelve Dollars and Fifty Cents (\$443,812.50) in an account established for the purpose of establishing an educational and scholarship fund. Each additional annual installment shall be placed in this account within one (1) year of the previous installment. This account shall be separate from and unrelated to the account established for backpay.

m. The account shall be used exclusively for the provision of monetary scholarship grants to individuals listed in Attachment A or their spouses, children or any combination thereof, absent reasonable administrative fees to be approved by the parties. The granting of such scholarship grants shall be limited only by the requirement that the grantee use the grant while matriculating toward an accredited Associate or Baccalaureate degree or progressing in an accredited license or certification program accredited and shall not be awarded on a competitive basis provided, however, if at any time applications for grants exceed the funds available to the Administrator of the fund, grants shall be awarded to those applicants who, in the opinion of the Administrator, are most likely to benefit.

n. The grants shall be awarded in increments of at least \$1,500.00 after applicant has been accepted for enrollment in an accredited school.

o. Those individuals who are not offered jobs pursuant to this agreement and their families shall be favored in the awarding of scholarship grants.

p. The Notice (Attachment B) shall include information regarding the existence and eligibility of the scholarship grants and the information form (Attachment C).

q. The account shall be administered by a professional scholarship or education fund which is selected by mutual agreement of the parties.

r. The account shall terminate no earlier than five and no later than ten (10) years from the date in which the account was commenced.

s. Upon termination of the account, or earlier if it is probable, in the opinion of the parties, that funds designated for the above purposes will not be needed, the remaining funds shall be used to provide like scholarship grants for the benefit of the minority community in general as determined by the fund's administrator and the parties.

t. The administrator of the account shall:

- (i) keep the funds safe:
- (ii) distribute the assets in conformity with this agreement:
- (iii) render to the parties all necessary accounting statements

- (iv) and complete all necessary legal documents:  
provide semi-annual reports regarding the movies allocated. The first report shall be due six (6) months after the effective date of the Decree, and subsequent reports shall be provided to the parties every six (6) months thereafter, with the exception of the final report. The final report shall be sent to the parties one (1) month before the expiration of this Decree. Said reports shall be sent to the Associate Regional Solicitor, U.S. Department of Labor, Room 881, 1240 East Ninth Street, Cleveland, Ohio and to the District Director, ESA-OFCCP, 200 North High Street, Columbus, Ohio. The semi-annual reports shall contain the following information:
- (1) the total amount of funds expended during the preceding six (6) month period pursuant to this Decree;
  - (2) a description of the specific programs) on which those funds were expended;
  - (3) the individual beneficiaries of the expenditures including their name, address, age, race, sex, and association with the class represented by Attachment A.

3. Violation: 41 C.F.R. 60-1.40  
Policy Statements

Defendant's policy statements were not signed and dated by the Chief Executive Officer.

Corrective Action:

Defendant shall submit signed dated policy statements of plaintiff. This policy shall be disseminated and discussed with all employees and managers having employment-decision responsibilities.

4. Violation: 41 CFR 60-1.42  
Postings

Defendant had not posted EEO Posters and the CEO's current policy statement at each site.

Corrective Action:

Defendant had not posted the EEO Posters and CEO's policy statement at each site in a place where they can be seen by applicants, employees and the general public.

5. Violation: 41 CFR 60-2.11(a)  
Workforce Analysis

Onsite review of salaries revealed that the Workforce had not been ranked by actual salary.

Corrective Action:



Defendant shall wage-rank its Workforce in all organizational units by salary paid. This data shall be incorporated into defendant's current<sup>1</sup> AAP and a copy provided plaintiff.

6.        Violation:    41 CFR 60-2.11  
                 Utilization Analyses

Job groups had not been developed by similar, wage, content and opportunity. In addition, job group contains title from management, professional technical and clerical categories. As a result of inappropriate job groups, availability statistics were inaccurate.

Corrective Action:

Defendant will revise its job groups to reflect similarly of wage, content and opportunity and develop new availability statistics for its revised job groups. This data shall be incorporated into the current AAP and a copy provided to OFCCP.

7.        Violation:        41 CFR 60-2.12  
                 Goals

Goals were inaccurate because inappropriate job groups and availability statistics were used.

Corrective Action:

Defendant agrees to develop new goals for revised job groups, incorporate the data into its current AAP and provide a copy to plaintiff. Goals shall be established annually equal to availability and expressed as a percentage.

8.        Violation:        41 CFR 60-2.12(m)  
                 Support Data (Applicant Flow)

Defendant was unable to identify the race of applicants for accurate annual analysis.

Corrective Action:

Defendant agrees to develop and implement an effective method to collect applicant flow data by race and sex. This data shall be evaluated annually with regard to progress toward goal accomplishment. Evaluation summaries shall be included in each current year's AAP. A description of the revised data collection method shall be provided to plaintiff.

9.        Violation:        41 CFR 60-2.13(d)(f)  
                 Identification of Problem Areas

Defendant failed to identify problem areas by organizational units and appropriate job groups.

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<sup>1</sup>"Current" AAP shall refer to defendant's AAP in effect January 31, 1997.

Corrective Action:

Defendant agrees to identify problem areas and develop detailed action oriented plans to address the problems. This information shall be incorporated into the bank's current AAP and a copy submitted to plaintiff.

10. Violation: 41 CFR 60-2.13(I)  
Program Involvement

Defendant's AAP did not address Community Involvement.

Corrective Action:

Defendant agrees to detail its involvement in community Action Programs in its current AAP. A copy shall be provided to plaintiff.

11. Violation: 41 CFR 60-250.4(b)  
Mandatory Job Listing

Defendant was unable to demonstrate that it had listed all suitable job openings with the State Employment Bureaus.

Corrective Action:

Defendant agrees to list all job openings paying \$25,000 or less annually with the State Employment Bureaus.

12. Violation: 41 CFR 60-250.5  
41 CFR 60-741.5(d)  
View AAPs

Defendant failed to post notice for employees and applicants of AAP inspection location and hours.

Corrective Action:

Defendant agrees to establish a time and location where its Veterans and Handicap AAPs call be viewed. This information shall be posted in areas accessible to applicants and employees.

13. Violation: 41 CFR 60-250.5(d)  
41 CFR 60-741.5(c)(1)  
Invitation to Self-Identification

Defendant failed to post its invitation to self-identify for covered veterans and individuals with handicaps.

Corrective Action:

Defendant agrees to develop an invitation to self-identify and make the notice available to all applicants and employees.

14. Violation: 41 CFR 60-250.6(b)  
Use of Military Records

Defendant's AAP did not address use of military records.

Corrective Action:

Defendant agrees to develop a statement that it will consider only job related data of a covered veteran's military records. This statement shall be included in defendant's current AAP and a copy provided to plaintiff.

15. Violation:           41 CFR 60-250.6(f)  
                              41 CFR 60-741.6(f)  
                              Recruitment

Defendant was unable to demonstrate recruitment of veterans and individuals having handicaps.

Corrective Action:

Defendant agrees to develop a list of recruitment sources able to provide qualified applicants. These sources shall be contacted whenever job openings are available. A description of this process shall be included in the defendant's current AAP and a copy provided to plaintiff. Sources to be contacted shall include, but not be limited to: The Bureau of Vocational Rehabilitation.

16. Violation:           41 CFR 60-741.6(3)(d)  
                              Accessibility

Defendant's facilities lacked set-aside parking for individuals with handicaps in some places. Other facilities lacked bathroom accessibility for individuals in wheelchairs.

Corrective Action:

Defendant agrees to conduct a review of accessibility in each branch office and correct identified problems. A summary of the review and remedies shall be submitted to plaintiff.

PART D IMPLEMENTATION AND ENFORCEMENT OF THE DECREE

23. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of this Consent Decree, is retained by the Office of Administrative Law Judge for a period of five (5) years from the effective date of the Consent Decree or until the parties stipulate in writing that all provisions of the Decree have been executed, whichever date shall occur sooner. The parties shall submit any such stipulation to the Administrative Law Judge upon its execution.

24. If, at any time after the effective date of this Consent Decree, plaintiff believes that defendant has violated any portion of the Decree, defendant will be promptly notified of that fact in writing. The notification will include a statement of the facts and circumstances relied upon in forming that belief. Defendant will have twenty (20) calendar days in which to respond in writing except where plaintiff alleges and successfully demonstrates to the Administrative Law Judge that such a delay would result in irreparable injury. The parties will attempt to resolve the disputed issues amicably for a period of twenty (20) days after plaintiff receives defendant's response.

25. Enforcement proceedings for violation of this Decree may be initiated at any time after this 40-day period has elapsed (or sooner if irreparable injury is demonstrated), upon filing with the Administrative Law Judge a motion for an order of clarification or enforcement and/or sanctions. The Office of Administrative Law Judges may, if it deems appropriate, schedule an evidentiary hearing on the motion. The issues in a hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion.

26. Liability for violation of this Decree may subject defendant to the sanctions set forth in the Executive order and its implementing regulations and other appropriate relief.

27. If a motion for an order of enforcement or clarification indicates by signature of counsel that the motion is unopposed by plaintiff or defendant, as appropriate, the motion may be presented to the Administrative Law Judge without hearing, and the proposed order may be implemented immediately. If said application or motion is opposed by any party, the party in

opposition shall file a written response within twenty (20) calendar days of service of such motion. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding to date.

28. The Consent Decree herein set forth is hereby approved and shall constitute the final Administrative Order in this case. IT IS SO ORDERED, ADJUDGED AND DECREED.

DATE: 11-1-96

RUDOLF L. JANSEN  
Administrative Law Judge

The parties hereby agree to a final order consistent with the terms herein and further agree that each party shall bear its own costs.

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ATTACHMENT A

AFFECTED CLASS MEMBER LISTING